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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1994/37

Addendum

Visit by the Special Rapporteur to the Russian Federation

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Introduction

1. At the fiftieth session of the United Nations Commission on Human Rights the representative of the Russian Federation announced the intention of his Government to invite the Special Rapporteur appointed by the Commission on Human Rights to examine questions relevant to torture to visit the country (see E/CN.4/1994/SR.29); by a note verbale dated 4 April 1994 the Ministry for Foreign Affairs formally extended an invitation to the Special Rapporteur to visit Moscow to familiarize himself on the spot with the pace of the court-system reform and domestic measures to safeguard the rights of convicts. By a letter dated 10 May 1994, the Centre for Human Rights informed the Permanent Mission of the Russian Federation to the United Nations Office at Geneva that the Special Rapporteur would carry out this mission during the second half of July and, in that connection, transmitted a copy of the standard terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights. The visit took place from 17 to 28 July; it included meetings, discussions and visits in Moscow (from 17 to 23 July and from 27 to 28 July), and meetings, discussions and visits in St. Petersburg (from 24 to 26 July). The Special Rapporteur was accompanied by a staff member of the Centre for Human Rights and two interpreters provided by the United Nations Office at Geneva.

2. As noted, the visit of the Special Rapporteur was at the invitation of the Ministry for Foreign Affairs; officials within the Department of International Humanitarian Cooperation and Human Rights of the Ministry for Foreign Affairs indicated three major reasons for this initiative:

(a) The Special Rapporteur could provide concrete recommendations on how to address the serious problems that currently exist in the judicial/penal system of the Russian Federation;

(b) The report of the Special Rapporteur could have a salutary effect on the establishment of a national consensus in the area of human rights; and

(c) The invitation to the Special Rapporteur would demonstrate that human rights issues are a matter of international cooperation as well as concern and that the utilization of such supervisory mechanisms does not constitute interference in a State's internal affairs.

3. Within all the ministries with which the Special Rapporteur dealt, there was a general awareness and recognition of the main elements of the problem. All officials emphasized the transparency of the current regime and their willingness to cooperate fully with the Special Rapporteur to ensure the success of his fact-finding mission. In this context, it should be noted that the Department of International Humanitarian Cooperation and Human Rights played a crucial role by helping to coordinate all aspects of the mission.

4. Accordingly, for the Special Rapporteur the mission was a cooperative exercise aimed at seeking solutions to problems of mutual concern. It should be noted, however, that the Special Rapporteur did not view the mission as one of prison inspection.

5. The Russian Federation has only recently emerged from the Soviet period in which scant regard was paid to the rights of accused and convicted persons deprived of their liberty. In that period, the treatment accorded to persons detained because of their perceived political opposition or human rights activity was especially cruel. In this regard the Special Rapporteur wishes to pay homage to all those prisoners of conscience who suffered under that system and, in particular, to thank them for their extensive cooperation and support former prisoners of conscience Sergei Kovalev, Head of the Presidential Commission on Human Rights; Viacheslav Bakhmin, Head of the Directorate of International Humanitarian and Cultural Cooperation of the Ministry of Foreign Affairs; Yuli Andreevitch Ribakov, Member of the State Duma from St. Petersburg; Valery Abramkin, Director of the Moscow Centre for Prison Reform; and Viktor Kogan-Yasni, Chairman of the Society "Right to Life" against the Death Penalty and Torture.

6. Since that period the human rights situation in the country has been transformed beyond recognition. There is real freedom of speech, political criticism, outspoken media and multiparty competition. After the set back of the 1993 attempted coup d'état and its ensuing repression, parliament was elected in a free, fully democratic election on the basis of a constitution adopted by popular referendum. There is a legal right to direct access to a lawyer immediately after detention in a police station. As indicated in the previous paragraph, many former victims of human rights violations are now in prominent public positions, hold posts of high official responsibility or are actively involved in the many non-governmental organizations that have flourished since the easing of Soviet systems of control under perestroika and glasnost and the subsequent collapse of the Soviet Union.

7. The fairly sudden arrival of political freedom has also given rise to some manifestations of political irresponsibility, perhaps resulting partly from the absence of an entrenched culture of tolerant political activity, as well as the economic and social problems mentioned below. This has led to some growth in support for extremist political parties and leaders. Some of these advocate expansionist imperial policies abroad and repressive measures at home. If these policies were to be accompanied by effective power, there would be dire consequences for the human rights situation.

8. Hand in hand with political liberalization has gone extensive economic liberalization which has led to unemployment unmitigated by an effective social security net, serious decreases in many peoples' standard of living, breathtaking inflation (slowly coming under control at the time of the Special Rapporteur's mission) and a generalized sense of economic insecurity. While the Special Rapporteur was in the Russian Federation there occurred the collapse of the MMM investment enterprise in which thousands of persons who had invested their often hard-earned savings in what appeared to have been a get-rich-quick operation seemed likely to lose what wealth they had.

9. Attendant upon the political and economic instability, there has been a perceived crime wave of huge proportions. There is no end of talk expressing concern at organized crime and banditry, with violence used as a means of buttressing operations involving theft, fraud, embezzlement and the like. Some alleged economic "crime" may merely reflect an antipathy on the part of law enforcement agencies, schooled in the former anti-capitalist ideology, to

the new game whose rules have not yet been sufficiently defined in law. Indeed, some cases have been plausibly alleged to reflect an abuse of the law by official agencies and public enterprises to resist competition from or to renege on deals with new private enterprises. In addition, there has been a rash of petty crime, usually involving various kinds of theft on the streets and in public places. This has led to a perceived sense of personal insecurity and an apparent demand for more effective law and order measures, with the accent being as much, if not more, on order rather than law. An example of how this has translated into political action is the recent Presidential Decree No. 1226 which has extended the maximum period of temporary detention (i.e. before formal remand) from 10 days to 30 days in respect of persons suspected of involvement in serious organized crime and banditry.

10. The Russian Federation has ratified most of the principal international conventions on human rights. It is a party to the following instruments, inter alia: International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights and the Optional Protocol thereto; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. It also has accepted the individual communications procedures under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 22 of the Convention against Torture.

11. The meetings held in Moscow and St. Petersburg and the visits undertaken are described in section I of the present report. Section II describes the initial phase of detention when an individual is first taken into custody by the police. It should be noted that this initial detention does not constitute an arrest under Russian law; the arrest occurs only when a representative of the Office of the Procurator formally decides to bring criminal charges against the individual. Section III describes the phase of preliminary detention in which an individual is held in an isolator of temporary detention, which is referred to by the Russian acronym IVS. Section IV describes the phase of remand detention in which an individual is held in a sizo (sledstvennyi izolyator, or investigatory isolator, i.e. a remand centre for confining those awaiting trial and sentencing or appeal.) Section V describes the Correctional Colonies that the Special Rapporteur had an opportunity to visit in St. Petersburg. Section VI contains the Special Rapporteur's conclusions and recommendations.

I. MEETINGS AND VISITS IN MOSCOW AND ST. PETERSBURG

12. In Moscow, the Special Rapporteur had two meetings with the head of the Directorate of International Humanitarian Cooperation and Human Rights, Mr. Viacheslav Bakhmin. He held discussions with the Director of the International Legal Department of the Ministry of Justice, Mr. Valentin Kruzhkov; the Chairman of the Committee on Legislation and Judicial Reforms of the State Duma, Mr.Vladimir Isakov; the Chairman of the Committee on Violations in Prison Lock-ups and Pre-trial Detention Centres, Mr. Oleg Mironov; the First Deputy Head of the Department of Corrections, Mr. Valery Orlov; the Chairman of the Presidential Commission on Human Rights,

Mr. Sergei Kovalev; the Deputy Minister of the Interior, Mr. Pyotr Mischenkov; the Deputy Head of the Moscow Police, General Viktor Kononov; and the Deputy at the Office of the Procurator General, Mr. Yuri Sherbanenko. The Special Rapporteur also had informal discussions with the Deputy Minister of Foreign Affairs, Mr. Sergei Lavrov, who hosted a luncheon for the Special Rapporteur.

13. In St. Petersburg, the Special Rapporteur met with the First Deputy at the Ministry of the Interior, Mr. Nikolai Gorbachevsky. He also held discussions with Colonel Vladimir Spitznadel, the Deputy Head of Police and Head of Services of Corrections and Social Rehabilitation, who coordinated, and accompanied the Special Rapporteur during the visit to St. Petersburg, Mr. Yuli Andreevitch Ribakov, a member of the State Duma from St. Petersburg, escorted the Special Rapporteur during much of his visit there.

14. The Special Rapporteur also visited places of detention in both Moscow and St. Petersburg. In Moscow he visited the following locations: Butyrskaya and Matrosskaya Tishnina No. 1, the two large remand centres for the city of Moscow; the *IVS* at Petrovka 38, the headquarters of the Moscow Police, and at police station No. 11; and City Hospital No. 20 where seriously ill or injured detainees are taken to receive medical care. In St. Petersburg the Special Rapporteur visited the following locations: the remand centres Kresty and Lebedeva; the *IVS* at a Leningrad district police station; a strict regime colony approximately 30 kilometres outside St. Petersburg in Fornosovo; and a juvenile re-educational and labour colony in Kolpino.

15. Within each of these detention centres the Special Rapporteur was able to interview and receive testimony from detainees. It must be recorded, however, that the Special Rapporteur was denied permission to speak in private with detainees in the pre-trial detention centres due to a Russian law which prohibits a pre-trial detainee from discussing his or her case with anyone other than the investigator, an official of the Ministry of the Interior or the Office of the Procurator, or his or her attorney. As a result, all interviews with remand prisoners in pre-trial detention centres took place in the presence of an official of the Ministry of the Interior. The Special Rapporteur notes that the presence of this official may have deterred, and indeed appeared to deter, the detainees from speaking freely about possible abuses on the part of the police, prison staff, investigators or procurators.

16. The Special Rapporteur would like to emphasize that the Russian authorities made every effort to make his visit public and transparent. To this end, they initiated media coverage of his visit. In particular, the Department of International Humanitarian Cooperation and Human Rights arranged for the Special Rapporteur's interview with a St. Petersburg TV station and his live interview with the radio station Echo of Moscow. On the final day of his visit, the Ministry for Foreign Affairs arranged a press conference in the press centre of the Ministry, which was covered by national television and attended by Russian and foreign journalists as well as representatives of Russian NGOs.

17. In addition to meetings with government officials and visits to detention centres, the Special Rapporteur also met and held discussions with representatives of several non-governmental human rights organizations. In particular, he held lengthy discussions with the Director of the Moscow

Centre for Prison Reform, Mr. Valery Abramkin; the Deputy Director of the Moscow Research Centre for Human Rights, Dr. Vladimir Raskin; the Chairman of the Society "Right to Life" against the Death Penalty and Torture, Mr. Viktor Kogan-Yasni; the Chairman and the Director of the Society for the Guardianship of Penitentiary Institutions, Ms. Olga Chaikovskaya and Mr. Andrey Babushkin, respectively; the Chairman of the Society for the Defence of Convicted Businessmen and Economic Freedoms, Mr. Viktor Sokirko; the President of the Independent Psychiatric Association, Dr. Yuri Savenko; and a representative of Human Rights Watch-Helsinki, Ms. Erika Dailey. In advance of the visit he had also had a meeting with research staff of Amnesty International.

18. The Moscow Centre for Prison Reform also coordinated a meeting with former detainees and family members of current detainees alleging serious violations of human rights. The Special Rapporteur also had a lengthy discussion with a practising attorney who represents criminal defendants.

19. The Special Rapporteur would like to thank the Ministry for Foreign Affairs for its invitation to visit the Russian Federation, thereby manifesting a spirit of cooperation with the Commission on Human Rights. He particularly appreciated the generous assistance and hospitality of the Department of International Humanitarian Cooperation and Human Rights. The Special Rapporteur also wishes to thank everyone, officials as well as private individuals, with whom he held discussions during his visit; their valuable information permitted him to understand better the current situation in the country.

II. THE INITIAL PHASE OF DETENTION

20. During his visit the Special Rapporteur received numerous allegations of police brutality at the time a suspect is taken into custody. Although beatings and other forms of ill-treatment appear to be frequent, the Special Rapporteur did not conclude that they are routine. The Special Rapporteur would note, however, that the lack of confidential meetings with detainees prevented an effective examination of the problem due to the apparent reticence on the part of detainees to make such allegations in the presence of an official from the Ministry of the Interior.

21. It does appear that there is evidence that police abuses are not necessarily deterred by a provision within the Criminal Code which provides that "an act of coercion to give evidence by means of threats or other illegal acts by the person carrying out an inquiry or preliminary investigation is punishable by deprivation of freedom for a period of up to three years and up to 10 years where such an act is combined with the use of violence or personal insult". (see article 179 of the Code of Criminal Procedure of the Russian Soviet Federal Socialist Republic). The belief that the police may act with impunity was vividly demonstrated by an incident involving a Russian official. As related to the Special Rapporteur, the official reported to the police an attempt at extortion made against him. While he was at the police station to file the report, a suspect was brought into the same room. In the presence of

the official, the policeman threatened, over the protests of the official, to shoot the suspect unless he confessed to the crime. The fact that the policeman felt free to commit this act in the presence of a witness indicates that there was no fear of punishment.

22. When a suspect is taken into custody he or she is immediately brought to the police station where he or she is placed in a holding room pending verification of his or her identification papers. Although an individual is not to be held in the holding room for longer than three hours, the Special Rapporteur received numerous reports that it is not unusual for individuals to be so held for longer than three hours. An attorney explained how one client had been held for 24 hours in the holding room. The Office of the Regional Procurator had subsequently acknowledged the excessive detention and indicated that (unspecified) measures would be taken against the (unspecified) person responsible. Similarly, the Special Rapporteur received direct testimony from a detainee in the *IVS* at Petrovka 38 in Moscow that he had been held for 24 hours in the holding room while the police verified his identification papers.

23. Although the time at which a police officer is dispatched to the scene of a crime and the time the officer returns to the police station is recorded in a journal, the time a detainee is placed in the holding room is not recorded in the journal for logging custody. The pertinent information about an individual is not recorded in this journal until his or her identification has been verified; the time at which this takes place is reflected in the journal. This method of recording information into the custody journal is susceptible to abuse, despite the safeguards developed to prevent such abuse.

24. In a major improvement over Soviet practice, Russian law now requires that detained persons must be informed by the police of their right to have an attorney. However, it is not uncommon for an individual taken into custody not to be informed of this right or to be denied the right after it is requested. In the Moscow remand centre Butyrskaya, a member of the Special Rapporteur's delegation spoke to one detainee who had been in custody for nine days, yet he had not been granted the right to contact a lawyer. Indeed, the detainee indicated that the investigator working on his case explicitly told him that it would be foolish for him to hire a lawyer since his guilt had been established.

III. THE PRELIMINARY DETENTION PHASE

25. As noted above, the formal arrest of a suspect technically does not occur until an investigator makes a decision to institute criminal proceedings against the suspect. "Arrest" is a measure of restraint of accused persons and "detention" is a measure of restraint of suspects prior to accusation. Pursuant to article 122 of the RSFSR of the Code of Criminal Procedure, the investigator has 24 hours after an individual is taken into custody to notify the Office of the Procurator, which has a further 48 hours to determine whether to initiate a criminal case; accordingly, there is a maximum 72-hour period of confinement prior to accusation. However, article 90 of the Code of Criminal Procedure provides in exceptional cases for confinement of suspects for up to 10 days without presentation to them of the accusation.

26. The newly adopted Constitution of the Russian Federation provides in article 22 that "arrest, taking into custody and keeping in custody are permitted only by judicial decision. An individual cannot be detained for a period of more than forty-eight hours without a judicial decision". The discrepancy between this constitutional provision and the 72 hours allowed the Office of the Procurator to initiate a criminal case provided in article 122 of the existing Code of Criminal Procedure is to be resolved by the promulgation of a new Code of Criminal Procedure. At the time of the Special Rapporteur's visit, the State Duma was just beginning the first reading of the draft Code.

27. This situation has been further complicated by the recent Presidential Decree No. 1226 "on urgent measures to be taken to protect the population from banditry and other activities of organized crime". This decree permits an individual to be held for up to 30 days without criminal charges being brought. Furthermore, the decision to detain an individual under this decree does not require the consent of the Office of the Procurator. It was significant that not one official with whom the Special Rapporteur spoke was willing to argue that the decree was constitutional, although an official of the Ministry of the Interior stated that it was justified on the grounds of necessity.

28. As noted above, an individual has the right to have a lawyer; moreover, a detainee must sign a statement indicating that he or she is aware of that right. In practice, however, the Special Rapporteur found that many detainees were without counsel. Several explanations were given. First, a lawyer is simply beyond the means of many detainees and legal aid is so inadequate that assigned lawyers are either too inexperienced or are unwilling to act diligently on behalf of the clients to whom they are assigned. Second, there is a general disdain for lawyers among the prison population, which is not unrelated to the fact that legal aid is inadequate and that the bar or trial lawyers associations are perceived to be weak. Third, the Special Rapporteur received numerous reports that investigators and representatives of the Office of the Procurator frequently pressure suspects to confess. As will be described below, the mere threat by investigators of confinement in certain remand centres can be sufficient to secure the "cooperation" of suspects. As a result, the suspects perceive that an attorney is of little value because guilt has already been established by means of the confession. As noted above, the Special Rapporteur also received allegations from detainees that police and prison officials denied them the right to contact a lawyer or their families.

29. During his visit to the Russian Federation, the Special Rapporteur visited the IVS attached to Petrovka 38, Police Headquarters in Moscow, and the IVS at a district police station in St. Petersburg. The IVS at Petrovka 38 contained 40 cells capable of holding up to 165 individuals. Six of these cells contained 10 cots, while the other cells contained 3 cots. At the time of his visit there were significantly fewer than 165 people being held; a cell for 10 held only 6 and several cells were empty. The conditions within the IVS did not appear to be inhumane. Detainees interviewed, albeit in the presence of an official from the Ministry of the Interior, had no specific complaints of physical abuse, although one prisoner did indicate that he received verbal threats from the investigator. In St. Petersburg the

conditions at the IVS were much worse. The five subterranean cells were dark, dank and oppressively hot with no ventilation. There was also little or no bedding available to the men and women held (separately) in these cells.

IV. THE PRE-TRIAL DETENTION PHASE (REMAND CENTRES)

30. It is a paradox that the worst facilities in the Russian Federation are the remand centres, or sizos (investigatory isolators), where the detainees are presumed to be innocent. The detainees can be held for years awaiting trial in what can only be described as appalling conditions. Indeed, in a meeting with the Special Rapporteur the Deputy Minister of the of Interior, Mr. Pyotr Mischenkov, described the conditions as "inhuman". The 1993 report of the Presidential Commission on Human Rights describes the conditions in these centres as "cruel and degrading to human dignity". The report concludes that these conditions are connected with the unjustly wide application of preventive detention on a formal basis. This conclusion is supported by the estimate of one source that 75 per cent of those detained in the St. Petersburg area are being held for misdemeanours or minor crimes.

31. There are currently 160 sizos in the Russian Federation with a population of 238,000, as compared with an official capacity of 167,000. Within each sizo the detainees are segregated according to the following categories: (i) first time offenders; (ii) recidivists; (iii) minors; (iv) women; (v) dangerous recidivists; (vi) those who have been convicted but who have appealed; (vii) death row inmates; and (viii) inmates in punishment cells. Prior to trial there is no separation of violent and non-violent suspects, although aggressive detainees regardless of their crimes can be removed and placed in solitary confinement. It should also be noted that a few individuals who have been convicted and sentenced may remain in the sizo and serve these sentences by providing necessary services, e.g. cooking, cleaning, repair work, etc.

32. Under article 97 of the Code of Criminal Procedure, detention in a sizo cannot last more than two months. This limit, however, can be extended by a regional or city procurator's office if it proves to be impossible to finish the investigation in this time and if there are no grounds for changing the "restrictive measures" up to a period of three months, i.e. a one-month extension of the initial two-month period. A further extension of up to six months is possible if complications arise in the case. An extension of the time-limit beyond nine months is possible in extreme cases and only with respect to those people accused of serious crimes. Only a representative of the General Procurator or he himself can extend the limit beyond 9 months - up to a total period of 12 months and 18 months respectively. No further extension is possible.

33. The 1993 report of the Presidential Commission on Human Rights notes that 59,286 individuals complained about the prolongation of their preventive detention, but only 10,419 of those complaints were upheld. It further notes that in 1993 28,588 individuals were held beyond the 18-month term for detention and another 6,932 were held without the legal measures (i.e. an order from the Office of the Procurator) to extend the term of detention. Of the 6,932 who were held without such measures, 2,243 were held for more than one month beyond the term of detention.

34. Following the completion of this investigative period, the detainee has the right to read all relevant files; the time provided to the detainee to read his files does not count towards the 18-month maximum time-limit for detention. Moreover, this 18-month time-limit does not include the amount of time needed for trial, which is the exclusive prerogative of the judge.

35. Although detainees have the right to a lawyer during this period, in practice they have limited access. Moreover, due to the law mentioned above that prohibits a suspect from discussing his or her case with anyone other than the investigator or lawyer, detainees are not able to have visits from family members. Detainees do have the right to receive letters and parcels from family members, but even this right is practically restricted by the fact that the sizos have an inadequate number of staff members to receive and sort the large number of parcels that are brought to the sizo by family members. The Special Rapporteur witnessed the frustration this situation creates at Matrosskaya Tishina No. 1, where hundreds wait daily to deliver the parcels. It is the norm rather than the exception that these family members must return for several days before they are able to make the delivery.

36. Pursuant to section 220 of the Code of Criminal Procedure, detainees do have the right to appeal to a court the decision of preventive detention, or the prolongation of preventive detention. When an institution holding detainees receives such an appeal it must within 24 hours forward it to the relevant court and inform the Office of the Procurator, which must immediately send all relevant documents to the court. The court must then verify the lawfulness of the detention or prolongation of the term of preventive detention within three days from the date of the arrival of the relevant materials from the Office of the Procurator. The decision of the court is reached in a closed session with the participation of the defence counsel and the Office of the Procurator.

37. In practice, however, the courts almost always confirm the lawfulness of the detention. Indeed, the entire investigative and judicial procedures to determine the guilt or innocence of a suspect places pressures on the investigator, prosecutor and judge to remand even non-violent first-time offenders. This is due in part to the rising crime rate in the Russian Federation and the public demand to take tough action against criminals, but it is also the result of a legal tradition that placed the interests of the State ahead of those of the individual. Although the Code of Criminal Procedure provides for the possibility of release on bail (art. 97) or release on recognizance (arts. 93-95), investigators or prosecutors rarely choose this form of preventive measure.

38. Article 9 (3) of the International Covenant on Civil and Political Rights guarantees that persons awaiting trial shall not generally be kept in detention. Detention before trial should be used only where it is lawful, reasonable and necessary. The Human Rights Committee has interpreted the "necessity" requirement narrowly. The Committee has found that detention may be necessary "to prevent flight, interference with evidence or the recurrence of crime" (Hugo van Alphen v. the Netherlands (305/1988) (23 July 1990), Official Records of the General Assembly, Forty-fifth session, Supplement No. 40 (A/45/40), vol. II, annex IX) or "where the person concerned constitutes a clear and serious threat to society which cannot be contained in

any other manner". (David Alberto Cámpora Schweizer v. Uruguay (66/1980) (12 October 1982), Selected Decisions of the Human Rights Committee (CCPR/C/OP/2), Vol. 2, p. 90, at p. 93, para. 18.1). The seriousness of the crime or the need for continued investigation, considered alone, do not justify prolonged pre-trial detention. (See Floresmilo Bolaños v. Ecuador (238/1987) (26 July 1989), Official Records of the General Assembly, Forty-fourth session, Supplement No. 40 (A/44/40), annex X, sect. I). Under this interpretation of article 9 (3) it would be difficult to justify the all-too-common practice within the Russian Federation of detaining non-violent first-time suspected offenders.

39. Article 9 (3) of the International Covenant on Civil and Political Rights also guarantees the right to trial within a reasonable time or to release. Although the Human Rights Committee has not provided specific guidelines on what constitutes a reasonable time, it is clear that the 18-month limit on pre-trial detention in the Russian Federation is incompatible with article 9 (3) of the Covenant, particularly in the light of the fact that the length of detention may be extended by years due to unreasonable delays during the course of a trial. The Special Rapporteur met one detainee in Matrosskaya Tishina No. 1 who had been in that remand centre for seven years. It should be noted that in the Russian Federation the maximum sentence for any crime is 15 years. Accordingly, this individual has served almost half of the maximum sentence without having been convicted.

40. The detention of an individual in a remand centre for several years, regardless of the conditions within the centre, is in and of itself a clear violation of the individual's rights. What makes the situation the Special Rapporteur encountered within the remand centres in Moscow and St. Petersburg particularly inhumane are the shocking conditions that exist within these centres. One detainee noted that the Special Rapporteur should have brought a video camera to record for the outside world the nature of the conditions, but even a video camera would not adequately convey the assault upon one's senses when he or she enters one of these cells. The oppressive heat, lack of oxygen and the odours of sweat, excrement and disease created by gross overcrowding are overpowering.

41. As noted in section I, the Special Rapporteur visited four detention centres during the course of his mission: Butyrskaya and Matrosskaya Tishina No. 1 in Moscow; Lebedeva and Kresty in St. Petersburg. Although the conditions varied slightly in each of these centres, the overcrowding in each was acute. The overcrowding exacerbates the inability of the staff to provide adequate food and health care to the detainees. It also makes it difficult to prevent the spread of infectious diseases. In most centres there was an extremely high incidence of tuberculosis and virtually all detainees had various forms of skin diseases.

42. Butyrskaya prison was built in 1771 under Catherine the Great. There was some restoration carried out in 1878, but apart from alterations to the women's wing, there has been no refurbishment for over 100 years. It contains 434 cells of which 101 are general cells of approximately 6 metres by 12 metres. The built-in coat hooks would indicate they were originally intended to house 20-25 prisoners in each cell. A further 301 cells are

smaller and originally intended to house no more than four prisoners. The remaining 32 cells are for punishment. In total, Butyrskaya should hold no more than 3,500 prisoners; it currently holds over 6,300.

43. During his visit to Butyrskaya, the Special Rapporteur entered one of the large cells in which there were 83 persons. Despite having read critical reports and having received first-hand accounts of the conditions of detention in Moscow's Butyrskaya and Matrosskaya Tishina No. 1, the Special Rapporteur was unprepared for the appalling reality he encountered there. When the door to such a general cell is opened, one is hit by a blast of hot, dark, stinking (sweat, urine, faeces) gas that passes for air. These general cells may have one filthy sink and a tap, from which water does not always emerge, near a ground-level toilet around which the inmates may drape some cloth for a minimum of privacy and to conceal the squalor of the installation. There is virtually no daylight from covered or barred windows, through which only a small amount of fresh air can penetrate. Artificial lighting is weak and not always functioning.

44. Due to the overcrowding in the general cells visited at both Butyrskaya and Matrosskaya Tishina No. 1, there is insufficient room for everyone to lie down, sit down or even stand up at the same time. At Matrosskaya Tishina No. 1 the Special Rapporteur saw some detainees lying on the floor underneath the lowest bunk (about 50 cm above the floor). All the detainees in these cells suffer from swollen feet and legs due to the fact that they must stand for extensive periods of time. The inmates tend to be half-clothed and are even stripped to their undershorts (at least in the summer, when the Special Rapporteur visited). Their bodies are perspiring and nothing can dry due to the humidity. Despite the existence of some medical and even hospital facilities (often without sufficient medicines), the general cells are the obverse of a hospital regime: they are disease incubators. Festering sores and boils abound; most if not all inmates suffer from skin diseases that cause pervasive itching.

45. The detainees in all preliminary detention centres are allowed only one hour a day to leave the cell to exercise. Once a week they are able to shower. The food - not always available because of the indebtedness of the institutions - is primitive, of a fat-saturated soupy nature. It is consumed in the cell and is excreted in the cell.

46. The Special Rapporteur spoke separately to three of the detainees in the general cell he visited at Butyrskaya, but, once again, in the presence of an official of the Ministry of the Interior. All three were first-time offenders who had been convicted of non-violent crimes. Each complained of the wretched conditions that existed in the cells, but all three also expressed frustration with the arbitrariness of the investigative process. One had been in the general cell for nine days, yet he had not been allowed to contact family members and he had seen the investigator for his case only once. Although he knew the charge being brought against him (attempted extortion), he had no idea how long the investigation would last or when the case was scheduled to go to trial, despite the fact that he had made a confession. He emphasized

that the investigator had almost complete discretion over the length of the investigation. Based upon the experiences of his cellmates, he was resigned to the fact that he would most likely spend months in the same cell awaiting trial.

47. The Special Rapporteur also visited inmates on death row in Butyrskaya awaiting Presidential pardon. An inmate on death row may share a cell with one other inmate, but most choose to be held in solitary confinement. Although there is no overcrowding, the cells were gloomy and basic. The inmates are allowed to shower only once every 10 days and once a month they are allowed to walk outside for 10 minutes. However, the director of Butyrskaya indicated that he may in fact be in violation of the law by permitting these brief walks. Inmates on death row have no right to food parcels nor to receive visitors.

48. A Presidential Commission on Commuting Sentences with a reputation for making humane recommendations, that is, recommendations for commutation of the death penalty, reviews all cases whether or not the convict petitions the Commission. The Commission may issue a recommendation commuting the death sentence, but the Commission normally takes two or three years to issue a recommendation; the inmate with whom the Special Rapporteur spoke had been awaiting a decision on pardon for three years. Moreover, the President reportedly does not always follow the recommendations of the Commission. While most could eventually expect to receive a commutation of sentence, some may not. The uncertainty of the situation must provoke anxiety and mental suffering of nightmarish proportions. The continuum of arbitrariness and petty torment prevails to the very end.

49. Ironically, conditions for recidivists the Special Rapporteur saw at Butyrskaya are not as harsh. The law properly requires them to be held separately from other categories of inmate and, in practice, they are kept in smaller cells, holding a maximum of four people. Nevertheless, these cells also have inadequate lighting and ventilation, are oppressively hot and malodorous. Similarly, the inmates receive inadequate food and suffer from the same health problems as the inmates in the general cells. Most importantly, the arbitrariness of the investigative and judicial processes dictates that they also must remain in these squalid conditions for an extended period of time while they await trial and sentencing.

50. The punishment cells were in the basement, each approximately 2 metres by 2.5 metres with a toilet in one corner. The director indicated that an individual may be placed in an isolation cell for up to 10 days. The detainee must then be returned to his normal cell for 1 or 2 days, but he may be placed back in the isolation cell for another 10 days. The director personally makes all decisions concerning punishment, although the detainee has a right to appeal such a decision to the Office of the Procurator. In practice, however, the Office rarely overturns the decision of a director to punish a detainee.

51. Matrosskaya Tishina No. 1 in Moscow, widely reported to have the worst conditions among the remand centres, was the final centre visited by the Special Rapporteur. Within this centre the Special Rapporteur visited the cell block for juveniles, the exercise yard, the large general cells, a quarantine cell and the hospital.

52. Certainly the juvenile cells at Matrosskaya Tishina No. 1 do not have the overcrowding problems of the general cells, but they do share many of the other problems. There is poor ventilation and lighting, the cells are dirty and infested with insects, and the inmates suffer from the same skin diseases as the adults. Although the rules allow the director to place one adult inmate in the juvenile cells to help maintain discipline, the Special Rapporteur visited one cell in which there were two adults and seven juveniles. In contrast, the Special Rapporteur saw no adult inmates among the juveniles at Lebedeva.

53. The general cells at Matrosskaya Tishina No. 1 were similar in size to those found at Butyrskaya. In cell 139, containing only 35 bunks, there were 100 people; in cell 110 there were 120. Most cells hold over 90 men. In cell 139 the detainees told the Special Rapporteur that on four separate occasions an inmate had an epileptic seizure, yet no guards responded to their cries, nor had the victim been treated by a doctor. In this same cell was the individual mentioned above who had been detained in the remand centre for seven years, half of that time in the same cell! It was also in this cell that the Special Rapporteur saw inmates lying under the bottom bunks.

54. The Special Rapporteur was particularly distressed by the conditions in the quarantine cell he visited. Although there were 13 people in the cell with 16 bunks, the conditions were incomprehensible, particularly in the light of the fact that the detainees were in such poor health. There was no circulation of air within the room, no natural sunlight, it was oppressively hot and humid, and it was filthy. Despite the fact that several of the inmates had open, festering sores, severe fungal infections with decaying flesh, and extensive rashes, they reported that they had not seen a doctor in over a week. They also complained that they were receiving only sulphur ointments rather than the antibiotics that were desperately needed. The Special Rapporteur cannot reconcile what he saw with the subsequent assertion made to him by the Ministry of the Interior that such quarantine cells do not exist in the institutions he visited.

55. Lebedeva was constructed 100 years ago and was intended to hold 1,500 prisoners. There are currently 2,521 detainees held there: 1,691 men, 800 juveniles and 30 women. The largest cells, intended to hold 15 individuals, may actually hold up to 57 men. Time constraints dictated that the Special Rapporteur could only visit a block in which juveniles were held. The Special Rapporteur found that the conditions for the juveniles at Lebedeva were significantly better than conditions found at other remand centres visited. The boys were provided uniforms, which had been donated by the German Government, the cells themselves had better air quality and ventilation and were cleaner, and the boys received more privileges (e.g. there was a ping-pong table in the corridor and the boys were allowed to watch videos daily). In general, there was a greater sense of order within Lebedeva, which was a reflection of the professionalism and care provided by the director, Colonel Konstantin Valentinovitch Tiurin and his staff.

56. In Kresty, the primary remand centre for St. Petersburg, the Special Rapporteur found the conditions not dissimilar from those found at Butyrskaya, although Kresty has nothing comparable to the large cells in Butyrskaya. All cells are approximately 3 metres long by 2.5 metres wide, with a toilet and

sink near the door. When the prison was built, under Czar Nicholas II, the cells were intended to house only one individual; the present official capacity of the cells is 6 and most currently hold 10 to 12 men. The maximum number of detainees that should be held is 3,300, but it currently holds 8,500, 25 of whom are on death row. As at Butyrskaya, the detainees are allowed outside the cell for one hour a day.

57. There are widespread reports of ill-treatment on the part of the staff of all remand centres, but these do not appear to be routine. However, there are persistent reports from reliable sources that violent inmates are intentionally placed in cells (referred to as "press", i.e. "pressure" cells to brutalize other inmates and to break their wills by creating an atmosphere of fear and repression, with a view to securing confessions or other information. During a visit to Butyrskaya by a delegation from the Duma, one witness described an incident in which three detainees, one of whom was wearing boxing gloves, were severely beating another detainee. The Ministry of the Interior categorically denies the existence of such cells. The Special Rapporteur was unable to have the unsupervised meetings with inmates that could have helped him shed further light on this discrepancy.

V. LABOUR COLONIES

58. Within the Russian penal system, convicts are held almost exclusively in labour colonies, of which there are four different forms: (i) general regime colonies; (ii) strengthened regime colonies; (iii) strict regime colonies for recidivists; and (iv) special regime colonies for dangerous recidivists. There are also rehabilitation centres in which there are no guards and, at the other end of the spectrum, a limited number of traditional lock-up prisons for those who break the rules in the colonies and convicts who have committed the most serious crimes. The colonies are further segregated by sex and age. A colony is bounded by a perimeter fence of barbed wire manned by armed guards. Inside the compound there are living barracks, medical facilities, a dining hall, a commissary, punishment cells, one or more factories and other buildings (e.g. schools, libraries, recreational facilities, etc.).

59. As noted in section I, the Special Rapporteur visited a strict regime colony and a juvenile colony. A strong indictment of the pre-trial detention centres is the fact that most detainees expressed a desire for a quick conviction by the courts so that they could be transferred to a labour colony. This is also a reflection of the relatively humane conditions found within the two colonies visited by the Special Rapporteur.

60. The strict regime colony the Special Rapporteur visited was in Fornosovo, approximately 30 km outside St. Petersburg. Within the compound there were five separate blocks in each of which lived 100 men. During the day the inmates could move around the compound freely; at night the doors to the separate blocks are locked. The most pressing problem the inmates face within these colonies is boredom. Due to the current economic situation in the Russian Federation, most of the factories within the colonies are not operating at full capacity, thus there is lack of work for the inmates. On the day the Special Rapporteur visited the colony at Fornosovo, most of the inmates were lying out in the sun on the soccer field at leisure.

61. The Juvenile Re-educational and Labour Colony at Kolpino was a model colony. The physical conditions within the colony were good and the staff demonstrated a genuine concern for the well-being of the boys. The Special Rapporteur was disturbed, however, by the fact that boys as young as 14 who were non-violent first-time offenders had been sentenced and deprived of their freedom.

VI. CONCLUSIONS AND RECOMMENDATIONS

62. The Special Rapporteur would first of all recall that his visit was undertaken at the initiative of the Government of the Russian Federation. He generally encountered a frank acknowledgement of problems, particularly relating to atrocious conditions in pre-trial detention institutions, and a hope that a fresh view from a United Nations perspective of problems that elicit constant concern amongst the Russian authorities, media and public could identify means of overcoming the problems.

63. The Special Rapporteur found the officials he met to be generally open and anxious to find means of improving the situation. In particular, those with responsibility for places of detention, especially the grossly overcrowded remand institutions, asserted their view that they were called upon to manage a situation that was not of their making and that the conditions added substantially to the demoralization of a staff already demoralized by low pay, low status, understaffing, insufficient material resources, unpleasant working conditions and inadequate training. Many of the officials in management positions had visited penal establishments abroad and aspired to high standards of professionalism. The reality which they were required to manage was an affront to their professionalism.

64. Despite this commitment, the constituency concerned with the rights of those deprived of their liberty, whether or not actually convicted of any crime, is limited. In the light of this, the Special Rapporteur was impressed by the concern expressed by all his interlocutors at the problem of the treatment of detained persons. Not only was this the case in respect of non-governmental organizations, the media and government officials, it was also true of members of the State Duma whom he met. Some of these had profound political differences, but all agreed on the need to avoid practices, notably the conditions in institutions of detention or remand, that would fall foul of the international legal prohibition of torture or cruel, inhuman or degrading treatment or punishment.

65. On the other hand, the Special Rapporteur encountered various degrees of despair that substantially increased material and financial resources would be allocated to resolve the problems. This was a question of political priority and it was hard to secure resources commensurate with the magnitude of the problem. How far solutions indeed depend on the allocation of resources will be addressed below. At this point, the Special Rapporteur merely notes that neither considerations of principle nor the scarcity of resources can justify the continuance for a moment longer of the most urgent problem, namely, the conditions of detention in some of the remand centres caused by what is inadequately captured by the anodyne word "overcrowding". The Russian Federation is responsible under its own and international law to put an end to widespread conditions that its own officials describe as "inhuman".

66. The Special Rapporteur is in possession of numerous allegations of beatings perpetrated by police when first detaining suspects or by police or investigation officials when they have them in temporary detention centres (IVS). Alleged cases of beatings on first detention before delivery to IVS or police lock-up may also occur in the way of individual police using their coercive powers for personal ends. It should be particularly difficult for beatings to take place once a suspect is delivered to an IVS, since there is a careful procedure for logging in new detainees. However, there is an initial period where a person may be held, formally for no more than three hours, for screening, identification checks and verification of any earlier police record. During this period the suspect is not logged in. The logging in only occurs after the investigator has produced a form confirming the details the screening is designed to elicit. During this period, there is no record of the detainee's presence and the Special Rapporteur has been given documents confirming to a detainee's lawyer that a particular suspect was held for over 24 hours in temporary detention. The police had denied the suspect's presence to the lawyer. The same could presumably happen in a police lock-up where there is no IVS. Accordingly, the period of temporary detention could provide an opportunity for abuses to occur.

67. It was not alleged that beatings or other exactions were routine in this phase. On the other hand, there was official acknowledgement that underpaid, overstretched and insufficiently trained police officers might individually be tempted to resort to illegal practices. Also, there remain traces within the police establishment of a reluctance to abandon the authoritarian style of the previous Soviet period. The Special Rapporteur believes that abuses do occur during this period, albeit not systematically.

68. Preliminary detention in an IVS can, on the recommendation of investigators, be authorized by a prosecutor beyond the normal maximum of 3 days for up to 10 days. Since the Presidential Decree that period can be extended for a further 20 days in respect of those suspected of involvement in organized crime or banditry. Even though access by a lawyer remains applicable, this leads to a condition of vulnerability in an atmosphere characterized by seeming arbitrary deployment of State power in conditions of discomfort. Despite the controls referred to above that would tend to inhibit abuses after a detainee has been logged in, the Special Rapporteur cannot discount allegations that some investigators have at times used coercive physical methods in IVS interview rooms to secure the "cooperation" of a suspect. At the same time, as long as a suspect may be threatened with transfer to a remand prison (*sizo* or investigatory isolator) and conditions in some isolators remain as described above, investigators' main weapon of coercion could well be the very threat of such transfer.

69. The continuum of arbitrariness reaches its apotheosis in some of the isolators. In the St. Petersburg remand centre of Lebedeva, the Special Rapporteur found no problems falling within his mandate and indeed found conditions to be reasonably humane, as far as a brief visit to limited parts of the institution could reveal. On the other hand, despite the fact that some of the overflow from Kresty isolator in St. Petersburg had been placed in Lebedeva, Kresty remained with an inmate population double its capacity. This meant that cells designed in czarist times for one prisoner and now considered

as appropriate to accommodate six prisoners, in fact usually accommodate 12 prisoners who have to sleep in two shifts. The atmosphere and conditions in Kresty are oppressive and degrading. On their own they would justify the emergency measures that will be recommended below.

70. However, the conditions of detention in Moscow's Butyrskaya and Matrosskaya Tishina No. 1 remand centres, especially in the so-called general cells of these two centres, contrived to be even more disgusting. They are believed not to be unique in the territory of the Russian Federation.

71. The Special Rapporteur would need the poetic skills of a Dante or the artistic skills of a Bosch adequately to describe the infernal conditions he found in these cells. The senses of smell, touch, taste and sight are repulsively assailed. The conditions are cruel, inhuman and degrading; they are torturous. To the extent that suspects are confined there to facilitate the investigation by breaking their wills with a view to eliciting confessions and information, they can properly be described as being subjected to torture.

72. The Special Rapporteur is aware of the difficulties faced by the authorities. These include legal rigidities tending to put a premium on detention rather than encouraging release on bail or recognizance or other forms of conditional release. This is so even in respect of first-time non-violent suspected offenders. To the extent that overcrowding would be alleviated by building new institutions or improving existing ones, this is very resource-intensive and takes time. Already some significant initiatives have been taken in this direction, both by the central Government and by the cities of Moscow and St. Petersburg. In the spring of 1994, a central government programme to build new remand centres aimed at housing 80,000 inmates within five years was announced. If this target can be met, and if the population of pre-trial detainees does not increase commensurately, then this could substantially alleviate the situation. It is an ambitious programme and steps will need to be taken to avoid the risk of the new institutions encouraging yet further resort to the already over used practice of pre-trial detention. In any event, these initiatives do not promise an early enough end to a problem in which, across the territory of the Russian Federation, there is an excess of population over capacity in the isolators of 71,000.

73. The prohibition of torture or cruel, inhuman or degrading treatment is absolute under international law. Indeed, according to article 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975, annex), even "exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment" (art. 3). It follows inexorably that the Government of the Russian Federation is obliged to put an immediate end to this situation. No State has the right to subject persons to these conditions, regardless of constraints on resources, rigidities in its legal system or the time required to develop new facilities. Below, the Special Rapporteur makes recommendations both for an immediate, temporary solution as well as for measures that could address the problem in the longer term.

74. The position of convicted prisoners who have exhausted their appeals is substantially different. Most such prisoners serve their sentences in various types of correctional labour "colony" or colony settlement. Perhaps the best evidence of their, at least relative, humaneness is the fact that prisoners in the isolators, who expected to be convicted, were anxious to be transported to colonies. The Special Rapporteur is not in a position to pronounce authoritatively on conditions in the colonies. Certainly in Kolpino colony for juveniles he found a concerned director and staff at pains to run a humane regime with a view to preparing their charges for a law-abiding life in the outside world. However, he was also surprised to find among the inmates juveniles of 15 or 16 who were sentenced for petty offences such as bicycle stealing or more complex, but equally non-violent, offences such as computer fraud. Deprivation of liberty for juveniles offending for the first time in a non-violent manner seemed grossly inappropriate and disproportionate.

75. Even in the strict regime camp of Fornosova, the Special Rapporteur appreciated the relatively open nature of the facilities. The main problem for this, as for other labour colonies is that there are now substantially fewer opportunities for productive labour activity (and consequent renumeration) because of the general economic dislocation in the country.

76. A small portion of convicts (apparently 1 per cent only) may serve their sentences in prisons. The Special Rapporteur met some of them in Matrosskaya Tishina No. 1. They seemed to welcome the regime which provided work inside and outside the institution.

Recommendation for immediate action

77. The Special Rapporteur believes that only by adopting at once the following recommendation can the Government of the Russian Federation begin to discharge the responsibility of the Russian State to those within its jurisdiction under its own law and under international law to prevent torture or cruel, inhuman or degrading treatment or punishment. He, therefore, appeals to the Government of the Russian Federation to remove from confinement in centres of detention on remand (isolators) all 71,000 detained in excess of the officially proclaimed capacity of existing institutions.

78. This recommendation should be put into effect by Presidential Decree if necessary. It could probably be achieved by ordering the release pending trial of all non-violent first-time offenders, any remaining overcrowding could be eliminated by opening up, on a temporary basis, indoor stadiums or other comparable public places, and transferring the excess population to such places.

Recommendations - general

79. Much greater use should be made of existing provisions in the law for release of suspects on bail or on recognizance (signature), especially as regards suspected first-time non-violent offenders. Instructions or guidelines to this effect should be given by the Minister of the Interior to investigators from his Ministry; by the Procurator General to State, regional

and local procuratorial investigators and supervisory prosecutors, and by the Minister of Justice and the Supreme Court of the Russian Federation to all judges handling criminal cases.

80. To the extent that the law has been so framed or interpreted as to restrict provisions for release on bail or recognizance to prevent the release of first-time, non-violent suspected offenders as a normal measure, the relevant federal and republican laws should be amended to secure this objective.

81. The draft Code of Criminal Procedure, giving effect to article 22 of the Constitution which places all deprivations of freedom under judicial authority, should be speedily adopted by the State Duma.

82. To the extent that more extensive use of release on bail or recognizance will not eliminate the overcrowding problem, there should be a crash programme to build new remand centres with sufficient accommodation for the anticipated population.

83. Existing institutions should be refurbished so that all institutions meet basic standards of humanity and respect for human dignity.

84. Provision should be made for sufficient food of palatable quality to be available to those whom the State deprives of the means to fend for themselves.

85. Medical facilities and medicines should be sufficient to meet the needs of inmates, even after the present situation (in which the State effectively subjects inmates to disease by placing them in health-damaging conditions) has been remedied.

86. The United Nations Programme of Advisory Services and Technical Assistance in respect of the Russian Federation should be intensified in the following areas:

(a) Training of law enforcement, prosecutorial, judicial and penitentiary officials in international standards in the administration of justice (pre-trial, trial and post-trial phases), in cooperation, as necessary, with other organizations, such as the International Committee of the Red Cross and academic institutions;

(b) The mobilizing of material and technical resources existing in Member States that the Special Rapporteur hopes and trusts could be made available in the same spirit of international solidarity and cooperation as that shown by the Government of the Russian Federation in inviting the Special Rapporteur.